

1  
2  
3  
4  
5 UNITED STATES BANKRUPTCY COURT  
6 NORTHERN DISTRICT OF CALIFORNIA

7 In re

8 LAURA JEAN WELLMAN,

No. 02-12586

9 Debtor(s).  
10 \_\_\_\_\_/

11 Memorandum on Motion for Summary Judgment  
12 \_\_\_\_\_

12 Debtor Laura Wellman and claimant Robert Ziino lived together and had a child together, but  
13 never married. Robert has filed a claim based on two promissory notes totaling \$800,000.00, and  
14 Wellman has objected. Before allowing discovery, the court allowed Wellman to be heard on her  
15 assertions that the notes are patently unenforceable and her objection should be summarily sustained.

16 For purposes of resolving her motion, the court adopts Wellman's representation of the facts.  
17 They are that prior to separation, Wellman represented to Ziino that she would be receiving \$1.6 million  
18 dollars through her family trust and inheritance and that said funds were available for the support of their  
19 son, Zachary. As part their agreement when they separated, Wellman agreed to give Ziino two  
20 promissory notes totaling \$800,000.00 and to pay this amount to provide for the child's needs throughout  
21 his lifetime. The debt of Wellmand to Ziino was in the nature of and was intended by the parties to be  
22 child support which Wellman was obligated to provide for the child, who would remain in Ziino's  
23 custody. There has never been any litigation or court proceedings regarding any of these matters.

24 Wellman's arguments for summary judgment are that private agreements for child support are  
25 unenforceable and that there was no consideration for the notes. Her arguments are, in a word, wrong.

26 It is certainly true that a private agreement which purports to limit child support or makes


1 insufficient provision for support is not binding on the child or the courts. However, a private agreement  
2 which does provide for sufficient support is binding and enforceable. The leading case on this issue is  
3 *Schumm v. Berg* (1951) 37 Cal.2d 174, 231 P.2d 39, in which the California Supreme Court held that the  
4 mother of a child born out of wedlock could sue to enforce an agreement of the father to provide support.  
5 See also *DeSilva v. Ballantine* (1950) 96 Cal.App.2d 503, 512 (“[W]hile parents may contract with  
6 each other with respect to the custody and support of their minor children, the latter are not bound by the  
7 contract . . .”).

8 *Schumm v. Berg* also destroys Wellman’s argument that there was insufficient consideration for  
9 the notes. The court specifically held that adequacy of consideration was established both by the legal  
10 duty to support one’s child and in forbearance from legal action. 37 Cal. 2d at 184-86. See also  
11 *Peterson v. Eritsland* (1966) 69 Wash.2d 588, 591, 419 P.2d 332, 334-35. Under general principles of  
12 California law, mutual consent is sufficient consideration for an agreement regarding support. See  
13 California Family Code § 3580.

14 It may be, as Wellman argues, that her consent was obtained through duress; that is an issue for  
15 trial. However, there is no merit to her argument that the notes are unenforceable as a matter of law.  
16 Accordingly, her motion for summary judgment will be denied. Counsel for Ziino shall submit an  
17 appropriate form of order.

18 Dated: September 21, 2005

19  
20  
21  
22  
23  
24  
25  
26



Alan Jaroslovsky  
U.S. Bankruptcy Judge